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Fifty-first session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 10 August 1999, at 3 p.m.

Chairman: Mr. HATANO

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The meeting was called to order at 3.05 p.m.

COMPREHENSIVE EXAMINATION OF THEMATIC ISSUES RELATING TO THE ELIMINATION OF RACIAL DISCRIMINATION

(a) SITUATION OF MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES

(b) XENOPHOBIA

(agenda item 3) (continued) (E/CN.4/Sub.2/1999/5, 6, 7 and Add.1, 8, 40; E/CN.4/Sub.2/1999/NGO/3, 4, 12; E/CN.4/1999/12, 15 and Add.1, 16 and Corr.1 and 2)

1. Mrs. HAMPSON congratulated Mr. Weissbrodt on his working paper on the rights of non-citizens (E/CN.4/Sub.2/1999/7 and Add.1), in which he stressed that any subsequent work by the Sub-Commission should focus on the problems specifically relating to discrimination against non-citizens, as opposed to discrimination against migrants, since the Commission on Human Rights had appointed a special rapporteur on the human rights of migrants at its preceding session.

2. Many of the issues raised by Mr. Weissbrodt would benefit from further examination, for example, the question of rights which attached to membership of a group of States such as the European Union and which could not be claimed by other non-citizens who were citizens of a non-member country of the European Union. There was also the question of the case law of regional human rights mechanisms, particularly that of the European Court of Human Rights on the issue of the expulsion by a State of non-citizens with family ties in that State, which showed that, in a great many cases, the decisions of the European Court differed from its ruling in the Bouchelkia v. France case referred to by Mr. Weissbrodt in his report.

3. Some problems in ensuring respect for the human rights of non-citizens were the result of accidents of history which had not yet been corrected. The concepts of nationality and citizenship were not always coterminous. For example, in the United Kingdom, a British national was a British citizen with a right of entry into the United Kingdom. There were types of British citizenship which did not carry that right with them. Once inside the United Kingdom, moreover, some rights, such as access to certain benefits, attached to citizenship of a Commonwealth country. The situation was complicated by the fact that aliens were not defined as non-citizens, but as persons who were not citizens of a Commonwealth country and not Irish.

4. It should therefore be recognized that the internal legal order might not or might not solely classify beneficiaries of rights in terms of citizenship. In his important statement under agenda item 2, Mr. Oloka-Onyango had raised the issue of "institutionalized racism", which took the form of overtly discriminatory practices. Those practices were neither encouraged nor condoned by the authorities. The problem was, rather, that they did not even recognize the existence of such discrimination, as illustrated by the way in which the London Police had investigated the killing of Stephen Lawrence, a British citizen of Caribbean origin. Institutionalized racism was particularly likely to occur where the prejudice was shared by the community at large. That raised the question of the role of the media.

5. The media played a vital role in shaping public perception of non-citizens and other minorities. States had to take action against those who disseminated racist ideas and protect freedom of expression. Article 20 of the International Covenant on Civil and Political Rights restricted such freedom by providing that any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence was prohibited by law. Article 20 did not, however, solve the problem, as shown by the reservations to it formulated by some States and a decision by the European Court of Human Rights in the Jersild v. Denmark case. The journalist in question had broadcast neo-Nazi ideas in order to persuade the authorities to take action to prevent situations which led some persons to espouse such ideas. He had been prosecuted and the Committee on the Elimination of Racial Discrimination had congratulated Denmark for having taken effective action against the advocacy of racial hatred, whereas the European Court of Human Rights, in which the journalist had brought proceedings, had considered that Denmark had committed a violation of his freedom of expression. It therefore had to be asked what a State was supposed to do in such a case. It was not always easy to determine whether or not a journalist was advocating or inciting racial hatred. In the United Kingdom, for example, the tabloid press slipped very easily from jingoism into xenophobia, particularly when covering problems relating to asylum seekers, refugees and economic migrants.

6. Recent events in Rwanda showed how far unchecked incitement to racial or ethnic hatred could go. Where incitement to racial or ethnic hatred had been clearly established, as in Rwanda with Radio Mille Collines, the international community had to sound the alarm and remind the States concerned of their obligations, if necessary, at emergency sessions of the Commission on Human Rights. Under article I of the Convention on the Prevention and Punishment of the Crime of Genocide, the Contracting Parties undertook to prevent and to punish that crime. Consequently, the Office of the High Commissioner for Human Rights and the Commission on Human Rights, possibly in cooperation with the Committee on the Elimination of Racial Discrimination, should set up a monitoring system in order to respond rapidly where it was clear that the incitement to racial hatred was likely to produce results which a State was either unable or unwilling to prevent. Consideration should also be given to the possibility of prosecuting journalists, under article 25 of the Statute of the International Criminal Court, for incitement to crimes against humanity. Bombing television stations was not a solution. Unless appropriate and effective action was taken in that field, it was to be feared that incitement to racial and ethnic hatred would again have tragic consequences.

7. Mr. SYED (Himalayan Research and Cultural Foundation) said that, although 128 States had ratified the International Convention on the Elimination of All Forms of Racial Discrimination, xenophobia was taking on alarming proportions in the world today and new techniques were being used to incite racial and religious hatred. For example, the so-called Muslim Mujahidin were distorting Islam and committing massacres in the name of a so-called "jihad", which had become a strategic weapon in the hands of some countries with expansionist designs.

8. In Jammu and Kashmir, for example, the barbaric massacre of dozens of non-Muslim villagers and migrant labourers by the so-called Muslim Mujahidin backed by Pakistan had caught the international community's attention.

Recently, Pakistan had launched the Mujahidin in an attack on Kargil that had led to the displacement of over 30,000 persons. The Pakistani Government was hiring the services of fanatic religious persons to teach xenophobia to poverty-stricken young Muslims in many countries in camps organized by the Pakistan army. The instruction given in those camps was designed to turn the entire world into a battle ground in the name of "jihad", whereas the message of Islam was one of brotherhood and amity.

9. His organization urged the Sub-Commission and the representatives of the international community to apply pressure on Pakistan to stop that dangerous trend of promoting xenophobia.

10. Mr. GUISSÉ said that slavery was the most serious form of discrimination there was. In Mauritania, that practice continued to survive despite the measures taken to eradicate it. In Sudan, thousands of persons continued to be sold like animals. That was genuinely something of which civilization should be ashamed. The United Nations should take specific measures to get those countries to put an end to those practices.

11. In the western countries, migrant workers, mainly Blacks, and the members of their families were subjected to serious harassment. Western trade union organizations should take an interest in the problems of migrant workers and urge respect for the relevant ILO conventions. In Europe, the rise of xenophobia, which was being encouraged by some political parties, was a matter of great concern. The border police and the forces of law and order sometimes subjected migrants to inhuman and degrading treatment. Countries of immigration should therefore keep a more effective watch on their border police, for the victims had no remedy. In the United States, the Black population experienced serious discrimination in the administration of justice, as shown by the very high proportion of Blacks sentenced to death. Odious racist crimes continued to be committed in that country.

12. The gaps in international law to which Mr. Weissbrodt had rightly drawn attention could not in themselves explain serious human rights violations resulting from racism and racial discrimination. States had to conduct a courageous policy and draft laws and regulations designed to combat those evils. In that connection, the decision in which the European Court had recently condemned France for torture was to be welcomed. Any serious violations of human rights, wherever they might be committed, had to be condemned in the same way.

13. Mrs. TALBOT (World Federation of Trade Unions - WFTU) said that, since the end of the cold war, conflicts ignited by racism, racial discrimination, xenophobia and intolerance had been proliferating throughout the world, particularly in the Balkans, Africa and South Asia.

14. Poverty was the decisive factor which was creating the breeding ground for the explosion of racist violence. Persons affected by poverty, hunger and joblessness had to find someone to blame for their plight and thus fell prey to incitement to racial and religious hatred, which diverted their attention from the real origins of their misery. Poverty and racist propaganda therefore had to be tackled simultaneously because they were used by those few who had the most to gain by provoking xenophobic behaviour and ethnic

conflict, whether in Kashmir, Afghanistan, Rwanda or the United States, where neo-Nazis were active and the rights of African-Americans and other minorities were being denied.

15. The solutions to those conflicts had to take account of all aspects of human rights and guarantee respect for the economic, social and cultural rights and the right to development of the peoples concerned. Globalization, whose advocates insisted that it promoted the oneness of the human family, was in fact contributing to poverty and hence to segregation along ethnic, religious and racial lines. Moreover, the structural adjustment policies imposed by the IMF and the World Bank had helped cause a vast upsurge in poverty and growing inequalities in access to economic, social and cultural rights which had led to recent bloody conflicts, particularly in the former Yugoslavia, Somalia and Rwanda.

16. In South Asia, the Balkans and Africa, terrorist and mercenary groups, often financed by foreign powers with economic and strategic interests in those regions, capitalized on and actively fermented tensions between ethnic communities. The World Federation of Trade Unions urged the Sub-Commission to compile data on the activities of those groups.

17. Mr. BOSSUYT, commenting on the working paper submitted by Mr. Weissbrodt on the rights of non-citizens (E/CN.4/Sub.2/1999/7 and Add.1), said that one of the new elements that had come to light was that there were distinctions between non-citizens. As far as "distinctions" were concerned, he recalled that the law prohibited only arbitrary, unlawful and unwarranted distinctions, i.e. "discrimination", but not "differentiation". It therefore had to be decided, case-by-case, whether a distinction was based on a ground which was not relevant to the right or freedom in question.

18. No distinction between citizens and non-citizens could be justified as far as civil rights were concerned. As indicated in paragraph 7 of General Comment 15 of the Human Rights Committee (HRI/GEN/1/Rev.2), non-citizens must, for example, not be subjected to torture. However, nationality was a relevant ground for not granting political rights to foreigners, in accordance with article 25 of the International Covenant on Civil and Political Rights. Some States had, admittedly, granted foreigners a limited right to vote at the communal or municipal level, but there was no hard and fast rule at the international level.

19. The question of economic, social and cultural rights was more sensitive. It was not obvious that non-citizens who had never paid into the social security system of the country where they lived, especially if it was financed by tax revenue, could claim assistance on the same basis as citizens of that country. In the case of moonlighters and irregular status workers, the relevant distinction was based on whether or not their work or residence was lawful. A State had no obligation to care for those residing illegally in its territory, but it did in the case of foreigners who had a residence permit and who enjoyed the same benefits as citizens. The problem of undocumented workers was that, because they were illegally in the country where they lived, they were very vulnerable and, if they went back to their own country, they had virtually no possibility of finding a job or receiving benefits from the State. The only way of combating violations of the rights, particularly the

socio-economic rights, of those non-citizens and the discrimination to which they were subjected was to help countries of origin to develop, and that required greater cooperation between industrialized and developing countries.

20. With regard to distinctions between non-citizens, there was a difference between categories of rights. No distinction was allowed as far as civil rights were concerned, whereas, in the case of political rights or economic and social rights, such a distinction was not necessarily discriminatory. On a reciprocal basis, States could grant political rights to non-citizens who were citizens of certain countries with which they formed an economic and political union; they might have provided for community citizenship. Similarly, a State could exempt the citizens of certain countries from the visa requirement or facilitate their access to the job market and entitle them to certain social benefits.

21. The problems encountered by the Roma to which Mr. Weissbrodt had also referred should, of course, be carefully considered by the Sub-Commission and definitely called for the preparation of a concerted programme of action, but that issue did not belong in a study on non-citizens, since the Roma were usually entitled to the nationality of the country where they lived. A specific initiative on their behalf would be welcome.

22. He noted that, in order to avoid duplication, Mr. Weissbrodt hesitated to include questions relating to migrants in the planned study because of the Commission's decision to appoint a special rapporteur on the human rights of migrants. There was, however, a basic difference between a Sub-Commission rapporteur and a Commission rapporteur. The latter followed developments in the human rights situation in a particular country or in all countries, on the basis of a specific theme, in the case of a thematic rapporteur. He contacted States to shed light on cases of alleged violations or to try to bring influence to bear. The mandate of a Sub-Commission special rapporteur was to prepare an academic study on a particular topic containing a comprehensive analysis of the problems that arose and suggestions and recommendations for solving them.

23. In conclusion, he was of the opinion that the Sub-Commission must carry out a study of the rights of non-citizens as a matter of priority, on the understanding that emphasis should be placed on non-citizens without residence permits in the host country.

24. Mr. GOONESEKERE said that affirmative action had been born in the United States at a time when it had been more than obvious that, although there were many opportunities for advancement, inequalities continued to exist, to the detriment of non-white minorities. Affirmative action had therefore been established in order to correct the injustices suffered by those minorities in terms of housing and of access to education and employment and, although that policy had at first been unpopular, it had gradually produced results.

25. In India, the Constitution recognized the principle of affirmative action, containing as it did special provisions on behalf of members of castes and "scheduled" tribes applying for jobs in the public service. In Sri Lanka, a minority rights movement had come to the fore and obtained the establishment

of quotas for recruitment and promotions in the civil service and the parastatal sector. However, there had been a case in which the application of the quota principle had worked against a person belonging to a minority. The court handling the case had ruled that the quota system had not been justified in respect of promotions and quotas had since been abolished.

26. He noted that affirmative action had become broader in scope and now also applied to women, homosexuals, AIDS victims and disabled persons, who were not minorities as such. For some countries which had experienced colonialism and where a linguistic minority was in the elite, affirmative action had to be redefined in order to restore a balance and avoid any conflict with universally recognized human rights, which he hoped would be taken into account in a future study.

27. Mr. RAJKUMAR (Pax Romana) said that, as part of the preparations for the World Conference against Racism, the Sub-Commission should do everything possible to banish the scourge of racial discrimination, which was exercised primarily against ethnic groups and national minorities whose rights were systematically violated, a situation which had led to a large number of conflicts that had caused many victims in Africa, especially in the Great Lakes region, in Europe - for example, in Kosovo - and in Asia. The Sub-Commission could not remain silent in the face of such grave crimes against humanity and had to take effective measures to protect the victims of those ethnic conflicts and to promote their legitimate rights, including their right to self-determination.

28. With regard to the rights of non-citizens, Pax Romana appreciated the working paper submitted by Mr. Weissbrodt (E/CN.4/Sub.2/1999/7 and Add.1), which drew attention to the conspicuous absence of national and regional mechanisms for protecting those rights in Asia. In the light of what was stated in paragraph 32, the impact of the Euro currency on non-citizens should be considered, for it might create new barriers, and the 1990 Amsterdam Treaty should also be studied because it was supposed to provide a legal framework for non-discrimination in the European Union.

29. Pax Romana also welcomed with satisfaction the working paper on the nexus between globalization and racism (E/CN.4/Sub.2/1999/8), which highlighted the various forms - social, economic and environmental - of racism. Social and economic globalization was perpetuating "a new form of slavery", namely, poverty in many parts of the world. Pax Romana therefore urged the author of the study to continue his work and show the nexus in other regions, including Africa and Asia.

30. The situation of migrant workers, especially women migrant workers, in the Middle East, Asia and Europe was a matter of great concern. Most of them were domestic workers who were subjected to discrimination and marginalization. It was therefore essential to set up a legal framework for the protection of their rights in all those regions, particularly when the current absence of such mechanisms denied them the right to a remedy in the event of the violation of their rights.

31. In conclusion, Pax Romana supported the organization of the World Conference against Racism and the continuing efforts of the Committee on the

Elimination of Racial Discrimination and urged the Sub-Commission to create new strategies to combat racism in all its contemporary forms, including ethnocentrism.

32. Mrs. MILAD (Association to Defend Tunisians Abroad - ADTE) said that the question of the protection of emigrants was a matter of constant concern in Tunisia, since emigrants were an integral part of Tunisian society. ADTE was working to promote the economic and social advancement of emigrants and their right to dignity in an atmosphere of tolerance and stability. In many countries, immigrants were subjected to discrimination that sometimes reached intolerable levels in all areas. That situation was a violation of the most basic rights to human dignity and physical integrity and was contrary to the spirit and letter of all international human rights instruments. Because of the increasingly serious economic recession in many countries, rising unemployment and the revival of nationalism, immigrants were singled out as the cause of all the problems of developing societies. Even those in lawful situations under legislation on residence and employment were subjected to nit-picking discriminatory regulations and did not enjoy genuine legal security.

33. The Tunisian Government had adopted a set of measures on behalf of Tunisian citizens abroad and, in that connection, ADTE recalled that, in the statement he had made to the European Parliament on 22 June 1993, President Ben Ali had proposed that a European-North African Charter should be drawn up to define the rights and duties of the North African community in Europe. She appealed to all non-governmental organizations working to achieve the same objectives on both sides of the Mediterranean to help build a forum for dialogue, consultation and partnership in order to promote the integration of immigrants rather than their assimilation, which deprived them of their specific cultural characteristics. She also invited them to combat all forms of discrimination based on nationality, race and religion so that the problem of emigration might be better understood.

34. Mr. EIDE congratulated Mr. Bossuyt, Mr. Pinheiro, Mr. Oloka-Onyango and Mr. Weissbrodt for their very useful contributions to the analysis and prevention of the scourge of racism. He particularly endorsed the six objectives of the World Conference against Racism which Mr. Pinheiro had outlined in his statement, as well as his proposal that they should be submitted to the preparatory meeting for the World Conference against Racism in May 2000.

35. He was also convinced that the working paper which Mr. Bossuyt would prepare on affirmative action and its practical application would go a long way towards clarifying the issues which needed to be discussed. In his opinion, a distinction should be made between transitional special measures to create social equality, on the one hand, and permanent measures which were designed to enable a minority group to preserve its own identity and were taken mainly in the cultural field, on the other.

36. With regard to Mr. Weissbrodt's working paper on the rights of non-citizens (E/CN.4/Sub.2/1999/7 and Add.1), he was of the opinion that the question should be approached somewhat differently, taking as the starting point the idea that all human rights applied to all and that all inhabitants

of a country were entitled to claim all human rights against the Government of that country, with justified exceptions, as Mr. Bossuyt had indicated, in respect of political rights, which were, moreover, provided for in the International Covenant on Civil and Political Rights. According to a recent general comment by the Human Rights Committee, the right to return to one's own country must also be interpreted as the right to return to one's country of permanent residence. It should be noted that the Committee on the Rights of the Child had stated, in its concluding observations on the report of Norway, that the authorities of that country should guarantee the right to education of all children, including the children of illegal immigrants. It was therefore obvious that any distinction between citizens and non-citizens must be regarded as an exception and justified by reference to international standards. He thus thought that Mr. Weissbrodt should continue his study of that question. He also agreed with the idea put forward by Mr. Bossuyt that a study should be carried out specifically on the Roma, since the discrimination to which they were subjected was not necessarily related to their lack of citizenship.

37. The working paper submitted by Mr. Oloka-Onyango (E/CN.4/Sub.2/1999/8) showed convincingly how the process of globalization in its present form tended to exacerbate racial, ethnic and religious tensions. He drew attention, for example, to the asymmetry between freedom of movement of goods and capital, as well as managers of TNCs, and freedom of movement of labour, which showed that there was no global market for the workforce. That was one of the major reasons for current inter-ethnic tension.

38. He endorsed the recommendation that the Committee on the Elimination of Racial Discrimination, and, in his opinion, the Sub-Commission, should examine ways in which international human rights instruments could be better applied to non-State actors which played a decisive role in the process of globalization. In view of the problems that existed in many countries, particular attention should also be given to the training of police and immigration officers so that they could do their work in a non-discriminatory way, as well as to the role of the Committee in that regard. Thanks to the work it had undertaken, the Sub-Commission would be able to make a useful contribution to the World Conference and to action to combat racism in the context of globalization.

39. Mrs. PARKER (International Educational Development) said that racism was particularly evident in the wars being waged against the Kurds in Turkey and the Tamils in Sri Lanka. To hide their policies and defend themselves against any accusations of violating international humanitarian law, the Governments of those countries were characterizing those wars as "terrorism" and "counter-terrorism". Under the guise of "nation-building", they were actually trying to exterminate the Kurds and the Tamils. For example, nearly 400,000 Tamils were facing starvation in Mannar and the Vanni now that the denial of food was being used by the Government of Sri Lanka as a military tactic.

40. Racism and racial discrimination were being worsened by the fact that the competent United Nations bodies did not treat all situations equally.

Thus, Kosovar refugees had received nearly $1.40 per day in food and medical care, while Sierra Leone's population received only $0.11 per day and Tamils in the Vanni even less.

41. The Sub-Commission could take concrete steps to improve the situation. It could condemn Turkey and Sri Lanka for their racist policies and violations of humanitarian law and then look into other armed conflicts which did not receive adequate attention by the Commission and urge the United Nations to set up a humanitarian aid distribution programme for all victims of war and catastrophe, without distinction of any kind, on the basis of need.

42. Mrs. MOYA (American Association of Jurists) said that the Government of Honduras was allowing international corporations to set up operations on land traditionally occupied by African-Honduran communities. In so doing, Honduras was violating ILO Convention No. 169.

43. There was labour market segregation in Peru, where racist criteria determined who got and kept jobs. Discrimination was even harsher in the case of indigenous and Black women and girls who were employed as domestic servants in slavery-like conditions. The same was true with regard to citizenship, the exercise of political rights and access to the courts and public places.

44. In Colombia, despite a 1993 act recognizing the ethnic and cultural characteristics of the Black African-Colombian communities and their right to be consulted about policies and projects of concern to them, the Government had recently enacted a decree regulating scientific research on biological diversity which did not take account of the way they managed the environment or of the special regimes to protect their traditional know-how that were being established. Continuing clashes between guerrilla fighters and paramilitary groups in the Pacific region had also led to the forced displacement of those population groups and violations of their territorial rights.

45. In Uruguay, no compensation had been granted to the Black communities which had been violently expelled from the centre of the capital, Montevideo, and forced to live in outlying areas during the military dictatorship in 1976. Ninety-two per cent of the Blacks in that country lived below the poverty line.

46. Her association again denounced the fact that hundreds if not thousands of foreigners were being detained in the United States, sometimes for years, before being expelled. They were either illegal immigrants whose expulsion had been ordered or legal immigrants who had committed crimes, who were serving prison sentences before being expelled and whom no other country wanted to take. That situation was a legal and humanitarian scandal with which the Sub-Commission's Working Group on Arbitrary Detention should deal.

47. Mr. QADRI (World Moslem Congress) said that, despite the international community's efforts, racism and intolerance were on the increase and there was a need for concerted and integrated action to combat those problems. The World Moslem Congress congratulated Mr. Oloka-Onyango for his report on

"Globalization in the context of increased incidents of racism, racial discrimination and xenophobia" (E/CN.4/Sub.2/1999/8), which raised serious issues calling for urgent attention.

48. In recent years, a new term had become part of the racist vocabulary, namely, "ethnic cleansing", which often went together with hatred of the religion to which the victim group belonged. A glaring example was the destruction in the last 10 years of Kosovo's cultural heritage, including many mosques. In Kashmir, Indian occupation forces were systematically destroying mosques and places of worship. Intolerance and xenophobic violence had to be stopped. Immediate measures also had to be taken to combat the use of information technology, particularly the Internet, to spread racial hatred.

49. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was scheduled for the year 2001, should also consider the question of the institutionalized racism of the Hindu caste system from which over 200 million people suffered.

The meeting rose at 4.55 p.m.